September 16, 2019

The Honorable Kathleen L. Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Docket No. CFPB-2019-0039; RIN 3170-AA98; Qualified Mortgage Definition under the Truth in Lending Act (Regulation Z)

Dear Director Kraninger:

The Housing Policy Council (HPC)[1] appreciates the opportunity to respond to the Consumer Financial Protection Bureau's (CFPB or Bureau) Advance Notice of Proposed Rulemaking (ANPR) on the Qualified Mortgage (QM) definition under the Truth in Lending Act[2] (TILA) and Ability to Repay / Qualified Mortgage regulation (ATR/QM).[3] We commend the Bureau for engaging in this exercise to solicit input on the impact of the scheduled expiration of the temporary QM category for GSE-eligible loans (the GSE Patch). HPC supports the Bureau's goal of eliminating the GSE Patch to create a more level playing field for private capital without disrupting the market and has developed a simple proposal that will achieve this objective.

The HPC proposal relies on the Dodd-Frank statutory framework,[4] as implemented by the CFPB in the 2013 ATR/QM regulation. The law established the core ability-to-repay (ATR) mandate and defined a category of mortgages that are presumed to fulfill that requirement, QM. The statute does not require debt-to-income (DTI) or any other underwriting variable to be included in the QM definition. Therefore, HPC recommends that CFPB eliminate the DTI

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[1] The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers, mortgage and title insurers, and technology and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families.
[2] 15 U.S.C. § 1639
[3] 12 CFR § 1026.43
[4] 15 U.S.C. § 1639c; Pub. L. 111-203, § 1639c.

requirement from the definition of QM at the time of expiration of the GSE Patch.[5] The HPC also recommends retention of the regulatory Safe Harbor feature, which renders the QM presumption of compliance with ATR to be conclusive for low-cost[6] QM loans. This pricing construct has historical grounding in the Mortgage Reform and Anti-Predatory Lending Act of 2007,[7] aspects of which were ultimately included in the Dodd-Frank Act, as well as in the 2008 Regulation Z rules for "higher-priced mortgage loans."[8]

The HPC proposal is also influenced by the findings presented in the Bureau's regulatory assessment report,[9] which highlighted unexpected market distortions resulting from elements of the regulation that were added to the definition at the discretion of CFPB, namely the DTI requirement, Appendix Q, and the GSE Patch. The CFPB report underscores that the GSE Patch served as a preferable alternative to achieve QM status, not only to reach borrowers with debt-to-income ratios above the 43 percent DTI threshold, but also to avoid compliance challenges associated with Appendix Q.

This letter provides details on HPC's ATR / QM Proposal, the rationale for the Proposal, and responses, as an appendix, to the specific questions the Bureau poses in the ANPR.

HPC Proposal:

a) *Remove DTI/Appendix Q*: Upon expiration of the GSE Patch, remove the DTI requirement and the related Appendix Q for qualified mortgages, which will result in a QM definition that tracks the statutory product restrictions and requirements, all of which reinforce the ability-to-repay standard. Specifically, under the HPC Proposal, a QM loan would reflect the statutory "safe product" constraints:
   - No negative amortization;
   - No interest-only;
   - No balloon payments;[10]
   - No stated-income loans – income and financial resources relied upon by the creditor must be verified and documented;
   - Fully amortizing payment schedule that accounts for taxes, insurance, and assessments; ARMs underwritten to maximum rate permitted in first 5 years or

[5] The HPC proposal is consistent with the recommendations submitted to CFPB on September 9, 2019 by a coalition of 23 industry, consumer advocacy, and civil rights organizations, https://www.regulations.gov/document?D=CFPB-2019-0039-0017. HPC was an active member of this coalition.
[6] Safe Harbor conclusive presumption of compliance with ATR is applied to QM loans for which the Annual Percentage Rate (APR) on the loan is at or below 150 basis points of the Average Prime Offer Rate (APOR) for a first lien or 350 basis points for a subordinate lien.
[7] H.R. 3915, 110th Congress (2007).
[8] 12 CFR § 1026.35.
[9] CFPB Ability-to-Repay and Qualified Mortgage Rule Assessment Report, (January 2019), https://www.consumerfinance.gov/documents/7165/cfpb_ability-to-repay-qualifiedmortgage_assessment-report.pdf.
[10] Except for certain loans as specified in the current ATR/QM Rule, see 12 CFR § 1026.43(f).

fully indexed rate, whichever is higher[11] (see footnote for HPC-proposed change);

- Points and fees do not exceed 3 percent of total loan amount, with adjustments for smaller dollar loans;[12] and
- Loan term does not exceed 30 years.

b) *Retain Safe Harbor and Rebuttable Presumption*: CFPB should preserve the rate spread test to distinguish between QM loans that are conclusively presumed to fulfill ATR under the QM Safe Harbor and those that are not, where the consumer retains the right to rebut that presumption of compliance. This loan pricing approach has long served as a regulatory market indicator for relative credit risk, often demarcating prime from nonprime loans, and continues to be used in various Federal regulations.

c) *Uphold ATR as Foundational Element of the Regulation*: The Bureau may also want to reaffirm the importance of this existing component of the law as the bedrock for responsible underwriting. Creditors should make an ATR determination for every residential mortgage loan.

Rationale for the HPC Proposal

1) *DTI and Appendix Q are Not Necessary*

HPC supports CFPB's plan to sunset the GSE Patch, but only with additional changes to the regulation, to ensure that the expiration does not constrain responsible mortgage lending activity. Namely, HPC recommends removal from the QM provisions of the regulation both the DTI requirement and associated Appendix Q.

Retaining a DTI feature in QM, set at any level, will always be problematic because this underwriting variable, like all other underwriting variables, was never meant to be an independent indicator of capacity to repay. The arguments against DTI as an isolated measure are many, including: how high or low to set an acceptable level always depends on the rest of the household financial credit profile; the amount of overall income affects the significance of the ratio, with a $30,000-income household having fewer resources available at a 50 percent DTI ratio than a household with a $300,000 income; the calculation of both income and indebtedness will vary by transaction and will generally reflect the figures necessary to qualify for a loan, rather than actual household income or obligations. This inherently poor stand-alone measure works only within comprehensive underwriting standards, as demonstrated by the CFPB look-back report, which presents the correlation between DTI and performance.[13] However, within QM, the DTI is not balanced against the other critical

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[11] HPC is advocating regulatory reconciliation of the statutory ATR requirement and statutory QM requirement for ARMs. See response to specific Bureau questions, "B. Other Temporary GSE QM Loan Issues, question 1" below.
[12] 12 CFR § 1026.43(e)(3).
[13] CFPB Ability-to-Repay and Qualified Mortgage Rule Assessment Report, (January 2019), pages 104-105.

underwriting risk variables, and therefore, is an ineffectual measure of a borrower's financial profile.

In addition to concerns with the DTI threshold, Appendix Q has proven challenging, for the industry and CFPB alike. The look-back report presented shortcomings with Appendix Q, highlighting that these standards are static, outdated, and fundamentally insufficient. Appendix Q standards are today and will always be incomplete; these instructions do not and cannot cover the breadth of information addressed in actual underwriting guidance, which will always include more extensive descriptions and detail regarding the multitude of permissible types of income and indebtedness, acceptable forms of validation, and appropriate treatment of these various types of financial information.[14] Further, as a component of regulation, subject to the Administrative Procedures Act, the requirements of Appendix Q cannot keep pace with other external factors, be they market trends or updated laws, such as the reporting changes imposed under the Tax Cuts and Jobs Act[15] that have resulted in a misalignment between Appendix Q and that law.

Finally, the prescriptive and rigid DTI / Appendix Q framework produces regulatory inconsistency and prevents the type of responsible market innovation in underwriting that improves overall credit risk management and credit availability. Ironically, the Bureau's own official interpretation of ATR speaks to the importance of flexibility in underwriting standards, to continuously adapt to changes in "empirical information and changing economic and other conditions."[16] However, any methodology designed to create flexibility within Appendix Q is unacceptable for QM loans because rules that are not objective, definitive, and prescriptive would remove the "bright-line" nature of the QM definition, which would undercut the Safe Harbor feature that permits the presumption of compliance within ATR to be conclusive. In the assessment report, the Bureau acknowledges the significant influence of the Safe Harbor on lending activity. Any erosion of the conclusive presumption that QM satisfies the ATR mandate, due to a subjective definition, would limit private capital participation in the market. Hence, Appendix Q cannot be transformed in any way to both offer sufficient flexibility and also serve as an objective, bright-line test for Safe Harbor and, therefore, its removal is warranted.

2) *Statutory Framework Doesn't Require DTI within QM*

HPC's Proposal to remove the DTI requirement from the QM definition fully satisfies the original statutory purpose and framework of the Dodd-Frank Act, namely that all loans must be underwritten in accordance with the ability-to-repay standard and that QM shall reflect and reinforce that fundamental ATR requirement. The law did not specify whether the QM presumption of compliance with ATR was to be conclusive (i.e., create a safe harbor) or rebuttable. CFPB chose a pricing rate spread measure to distinguish between QM loans with a safe harbor and those with rebuttable presumption. HPC recommends preservation of this critical Safe Harbor feature in the regulation, under which the QM presumption of compliance is conclusive.

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[14] CFPB Ability-to-Repay and Qualified Mortgage Rule Assessment Report, (January 2019), page 193.
[15] Pub. L. 115-97.
[16] 12 C.F.R. pt. 1026, Supp. I, 1026.43(c)(1)-1.

These key statutory components, as exercised within the existing regulation – ATR standards, QM features, and the Safe Harbor/Rebuttable Presumption distinction – collectively influence and motivate lenders to produce high-quality, well-underwritten, safe, affordable, low credit-risk loans.[17] To be clear, the purpose of the Dodd-Frank Act, expressed under TILA sections 129C, minimum standards for residential mortgage loans, and 129B, residential mortgage loan origination, is to "assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive."[18]

Of critical importance, the QM statutory construction complements ATR, providing the presumption that the creditor has fulfilled the ability-to-repay determination when mortgages meet the QM requirements. QM is an affirmation of ATR. Mortgages that satisfy the statutory QM product features and practices assure that a lender is originating a loan in accordance with the borrower's capacity to satisfy the mortgage obligation over the long term. Among the activities that QM is designed to *prohibit* are products that allow lenders to:

- rely solely on the value of the collateral to make loans;
- accept stated or possibly falsified, income rather than verified financial information to make loans;
- suppress rates through temporary discounts and teasers to qualify the borrower with reduced initial payments;
- use negative amortization and interest-only arrangements to create only short-term "affordability" for borrowers; and
- price substantially higher for inevitable default risk, rather than decline borrowers who lack capacity to repay.

These types of products and practices are banned from QM, to ensure that QM status is strictly limited to mortgages that fulfill the ATR mandate.

The QM regulatory definition need go no further than the mandatory statutory restrictions. The law does not require that QM replicate the underwriting or include any underwriting variables that are already included in ATR. QM can and does reflect ATR by virtue of the products and practices that are explicitly prohibited. For this reason, the statute states that QM is presumed to fulfill ATR: "any creditor with respect to any residential mortgage loan, and any assignee of such loan subject to liability under this subchapter, may presume

[17] The concepts that inform the Dodd-Frank Act are not new. All of these features are derived from the Mortgage Reform and Anti-Predatory Lending Act of 2007 and the Qualified Mortgage and Qualified Safe Harbor Mortgage Act of 2009,[17] neither of which were enacted, but both of which were instrumental in shaping the Dodd-Frank Act.

[18] 15 U.S.C. § 1639b(a)(2). Section 129C includes the standards for ability to repay, the presumption of ability to repay, and certain prohibitions and restrictions (e.g., prepayment penalties, single premium credit insurance, and arbitration). Section 129B includes requirements for mortgage originators to be qualified, prohibition on steering incentives, and the Bureau's discretionary rulemaking authority to prohibit or condition terms, acts, or practices relating to residential mortgage loans that the Bureau finds to be abusive, unfair, deceptive, or predatory.

that the loan has met the requirements of subsection (a) [ability to repay], if the loan is a qualified mortgage."[19]

In contrast, Section 129B contains an exemption from ATR income verification for certain streamlined refinances[20] and, similarly, states that the ATR requirements "shall not apply" with respect to any reverse mortgage or temporary or bridge loan with a term of 12 months or less…"[21] If Congress intended for QM to be an alternative or exception to ATR, in which case QM might necessitate its own set of binding underwriting requirements, the statute would have expressly stated it as such. Instead, QM is explicitly stated to be "presumed" to fulfill the ATR requirement.

Bolstering this statutory construction, CFPB included in the regulatory framework the Safe Harbor feature that further fortifies the intent of Congress[22] to induce lenders to make ATR-compliant QM loans, a formulation that is also used in the Federal Reserve Board's 2008 higher-priced mortgage loan definition.[23] The Bureau designed a higher-level legal protection for QM loans with annual percentage rates (APRs) that are at or below 150 basis points of the Average Prime Offer Rate (APOR). For QM loans that fall within this rate spread, the QM presumption of compliance with ATR is conclusive. This special privilege is reserved for these lower cost mortgages intentionally, because the rate spread reflects the low risk nature of these "prime" transactions. QM loans with rate spreads that exceed the 150 basis points over APOR threshold are presumed to satisfy ATR, but that presumption of compliance is rebuttable. The consumer has the right to question and take legal action, as necessary, to challenge whether the lender fulfilled the ATR obligation.

The ATR principles, QM product parameters (including verification of income and assets relied upon by the creditor), and safe harbor feature are well-designed elements of the rule that operate together to achieve the statutory intent, to compel lenders to make fully-underwritten, safe, and affordable mortgages. Further, the housing market environment offers a foundation for lender compliance with the ATR underwriting principles. Secondary market investors demand adherence to proper underwriting and product standards, require strict diligence reviews and detailed data disclosures, and price accordingly. Meanwhile, prudential state and federal regulators and shareholders monitor, supervise, and enforce safe and sound practices and products.[24] As a result, the removal of the DTI from QM will not change the structure, core purpose, or governing force of the regulation.

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[19] 15 U.S.C. § 1639c(b)(1).
[20] 15 U.S.C. § 1639c(a)(5).
[21] 15 U.S.C. § 1639c(a)(7).
[22] This pricing approach harkens back to the unexecuted bill, the Mortgage Reform and Anti-Predatory Lending Act of 2007, which used pricing to distinguish between a conclusive and a rebuttable presumption of compliance with ATR.
[23] 12 CFR § 1026.35.
[24] 15 U.S.C. § 1639c note, the specific rule of construction provided in Dodd-Frank for depository institutions: "No regulation, order, or guidance issued by the Bureau under this title shall be construed as requiring a depository institution to apply mortgage underwriting standards that do not meet the minimum underwriting standards required by the appropriate prudential regulator of the depository institution."

Conclusion

Thank you for the opportunity to share the HPC proposal, to eliminate the DTI requirement from the QM definition within the ATR/QM rule upon expiration of the GSE Patch. Attached to this letter are HPC's responses to the specific questions set forth in the ANPR. Our responses should be read in the context of the proposal described in this letter.

The practical approach that we are recommending, to remove the DTI requirement from QM, can be executed within a reasonable timeframe, will not disrupt access to credit, fulfils the Dodd-Frank Act statutory mandate, enables competition and innovation, expands participation in the mortgage marketplace by private capital providers, and reduces the systemic risk caused by GSE market domination and concentration.

In sum, HPC members believe that this proposal satisfies the goals and objectives of the broad range of stakeholders across the housing finance system, and in so doing, creates no competitive or regulatory advantages or disadvantages for any particular groups, regardless of their business models. We believe that a regulatory approach that is agnostic to the business interests or execution strategies of any particular organization is not only a worthy goal for CFPB, but also a regulatory imperative.

Should you have any questions about our proposal or want additional information from HPC or its members, please do not hesitate to call Meg Burns, SVP for Mortgage Policy, at 202-589-1926.

Yours truly,

Edward DeMarco, President

Appendix: HPC Responses to Bureau ANPR Questions

These responses should be read in the context of HPC's proposal, as described in our comment letter.

Assessing Ability to Repay under the General QM Loan Definition

1) Direct Measures of a Consumer's Personal Finances

a. Assuming . . . should the Bureau continue to include only a DTI limit, or should the Bureau replace or supplement the DTI limit with another method (e.g., residual income or another method)? If so, which method and why?

As described in the HPC proposal, the Bureau should eliminate DTI from the QM definition. For the statutory QM requirement for verifying and documenting income and financial resources relied upon by the creditor, HPC recommends that the Bureau retain the existing cross-references to the ATR standards for documentation and verification of income[25] rather than developing a new standard, to ensure consistency across the regulation. These existing ATR provisions are clear and unambiguous, with useful examples of permissible, bona fide financial documents, as well as a clear definition for the required qualities and conditions for financial information to be considered valid.

b. Assuming . . . should the limit remain 43 percent? Should the Bureau increase or decrease the DTI limit to some other percentage? Should the Bureau grant QM status to loans with DTI ratios above a prescribed limit if certain compensating factors are present?

The Bureau should not retain DTI in the QM definition.

c. Assuming . . . the Bureau is considering what standards creditors should be permitted or required to use to calculate and verify debt and income.

i. Assuming . . . should creditors be required to continue using Appendix Q to calculate and verify debt and income? Should the Bureau replace Appendix Q? If the Bureau retains Appendix Q, how should it be changed or supplemented?

As described above, the Bureau does not need to include a separate measure for the consumer's personal finances in the QM definition. The statutorily-required product and practice prohibitions provide a sound approach for determining that the lender has assessed the consumer's capacity to repay the mortgage.

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[25] 12 CFR 12 CFR 1026.43(c)(2)(i), (c)(4), (c)(2)(vi), and (c)(3).

ii. ***If the Bureau does not retain Appendix Q or permits use of an alternative, what standard should the Bureau require or permit creditors to use to calculate and verify debt and income? Should the Bureau specify in Regulation Z an existing version of a widely used method of calculating and verifying debt and income that creditors would be required to use? Or, to provide flexibility to creditors, should the Bureau combine a general requirement to use a "reasonable method" with the option to use, as a safe harbor, a specified, existing version of a widely used method for calculating and verifying debt and income? If the Bureau were to specify an existing version of a widely used method for calculating and verifying debt and income under either of the approaches described in this paragraph, which method (or methods) should be allowed? Should Appendix Q be one of them?***

The Bureau should eliminate the DTI requirement from QM and with it, Appendix Q. In lieu of these provisions, the Bureau should retain the cross-references to the ATR standards for documentation and verification of income and financial resources relied upon by the creditor, as described above.

2. Alternatives to Direct Measures of a Consumer's Personal Finances

a. *The Bureau requests comment on whether standards that do not directly measure a consumer's personal finances are consistent with, and further TILA's purpose of, ensuring that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans.*

The statutory QM product and practice prohibitions, which reinforce the ATR requirement, are a sound measure of a lender's assessment of the consumer's capacity to repay. The Bureau should rely on the existing, well-developed rule language for QM and retain the cross-reference to ATR, as described above, to define documentation and verification of income and financial resources relied upon by the creditor for QM. This approach ensures regulatory consistency between ATR and QM and preserves the well-understood requirements built into ATR.

The Bureau ANPR refers to a proposal for mortgage loans that have seasoned and performed for 2 years in the portfolio of a financial institution to be eligible for QM status. HPC members are not opposed to this option, but only if offered in addition to the QM status that is assigned at the time of loan consummation, per the statute, for fulfillment of the QM statutory product features. The application of this seasoning arrangement for GSE loans should also be clarified by CFPB, if it were to include this additional option in the regulation. The Bureau might consider aligning the seasoning requirement with the existing GSE representation and warranty standard that requires a three-year pay history with no more than two 30-day delinquencies. If this seasoning approach were included in the regulation, the Bureau may want to stipulate that the required on-time monthly payments come from the borrower's own funds. Finally, the Bureau should consider how ARM products are treated under a seasoning approach; although ARMs must be underwritten to

a fully indexed rate under ATR, the consumer's payment obligation may be smaller during the initial rate period.

b. ***The Bureau requests comment on the advantages and disadvantages of such standards relative to standards that directly measure a consumer's personal finances, including DTI ratio and residual income.***

The existing statutory and regulatory framework requires that all loans fulfill ATR, that QM reinforces this fundamental consumer protection, and that the presumption that QM fulfills ATR is conclusive when the rate spread affirms that the mortgage is a low-credit-risk transaction. In other words, the interplay between the ATR, QM, and Safe Harbor serves as the best indication that the mortgage is a well-underwritten, low-risk, safe, and affordable loan.

Further, as mentioned above, DTI is not a risk factor that can stand alone, to *independently* measure, with any accuracy, the likelihood of borrower repayment or the overall risk profile of a mortgage transaction. The DTI risk variable, even when used as a component of the comprehensive underwriting process, is not a consistent measure, for a variety of reasons. The calculation methodology will vary depending on the loan type, the borrower profile, and the means by which the underwriting is performed (manual or automated). DTI should remain a variable within ATR, rather than a distinct and inadequate measure for QM.

c. ***Assuming . . . should the Bureau retain the current line separating safe-harbor and rebuttable-presumption QMs or modify it and, if so, how?***

Yes, the Bureau should retain the current distinction between safe harbor and rebuttable presumption for QM loans. Loan pricing is an historically proven market indicator for credit risk, commonly used in other Federal mortgage regulations. The Federal Reserve stated in the Higher-Priced Mortgage Loan regulation in 2008, "loans with higher APRs generally have higher credit risks, whatever the source of the risk might be – weaker borrower credit histories, higher borrower debt-to-income ratios, higher loan-to-value ratios, less complete income or asset documentation, less traditional loan terms or payment schedules, or combination of these or other risk factors."[26]

A critical consideration in adopting an approach that relies upon pricing as a market indicator for credit risk is ensuring that private capital providers are involved in pricing that credit risk. Today, providers of private capital price credit risk in the private label market and in the GSE market (in the form of private credit enhancement for loans with LTVs greater than 80). FHA, by contrast, has been prevented from adopting a risk-based pricing structure and therefore FHA insurance premiums do not resemble private market pricing. Moreover, there is presently a misalignment between FHA's safe harbor cap and that used by the rest of the market that may advantage FHA execution. Specifically, FHA's QM safe harbor calculation provides for a higher overall APR relative to APOR

[26] 73 Federal Register 44522 (July 30, 2008)

spread than the general QM safe harbor and is allowed to fluctuate based on the FHA annual mortgage insurance premium rate.

Ending the GSE Patch may have the unintended effect of shifting volume to FHA, such that private capital participation in the market is diminished and taxpayers are more exposed to risk of loss. HPC members urge the Bureau to take steps to minimize or eliminate this disparity in treatment between the FHA and standard QM safe harbor definitions. HPC is aware of arguments posed by several organizations to increase the level of the APOR cap for the safe harbor, which is one approach to address the disparity. HPC has no objection to this approach, though we take no position today on the precise appropriate pricing cap. Another approach to eliminate the disparity and level the playing field that the Bureau could consider is to exclude the cost of private credit enhancement from the APOR spread calculation in the general QM safe harbor calculation. Whatever approach the Bureau takes, the QM safe harbor calculations should be reasonably aligned in order to achieve a level playing field for providers of private capital.

HPC also encourages the Bureau to consider the upcoming implementation of the Current Expected Credit Loss (CECL) standard, which overlaps the with the expiration of the GSE Patch. The introduction of this standard will change how portfolio lenders reserve for credit losses, requiring them to book a reserve at the time of origination for lifetime credit losses. In light of this new requirement, there may be changes to how mortgages are priced to reflect the increased reserve requirements which may further pressure the disparity between the FHA and general QM safe harbor threshold.

Finally, the Bureau, FHFA, and FHA should consider analyzing and releasing GSE and FHA mortgage data to allow market participants, researchers, and advocacy organizations to analyze and understand any impact and implications from changing the Safe Harbor cap.

d. *The Rule currently provides that a consumer may rebut the presumption of compliance only by proving that, based on the information available to the creditor at the time of consummation, the consumer lacked sufficient residual income to meet living expenses, including any recurring and material non-debt obligations of which the creditor was aware. Assuming without deciding that the Bureau were to adopt standards that do not directly measure a consumer's personal finances, should the Bureau further specify or clarify the grounds on which the presumption of compliance can be rebutted?*

The existing regulatory language[27] is adequate; the Bureau does not need to further specify or clarify the grounds on which the presumption of compliance can be rebutted.

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[27] 12 C.F.R. § 1026.43(e)(1)(ii)(B): "To rebut the presumption of compliance described in paragraph (e)(1)(ii)(A) of this section, it must be proven that, despite meeting the prerequisites of paragraph (e)(2), (e)(4), (e)(5), (e)(6), or (f) of this section, the creditor did not make a reasonable and good faith determination of the consumer's repayment ability at the time of consummation, by showing that the consumer's income, debt obligations, alimony, child support, and the consumer's monthly payment (including mortgage-related obligations) on the covered

Other Temporary GSE QM Loan Issues

1. ***The Temporary GSE QM loan provision will remain in effect until the earlier of January 10, 2021, or the date that the GSEs exit conservatorship. To minimize disruption to the mortgage market when the Temporary GSE QM loan provision expires, should the Bureau consider any other changes to Regulation Z's ability-to-repay and qualified mortgage provisions (i.e., other than changes discussed in response to prior questions)?***

   As discussed above in Section I and in response to other questions, HPC's Proposal includes some adjustments to the ATR/QM Rule beyond the expiration of the GSE Patch. For example, removing the DTI from the General QM definition and Appendix Q will require removal of all references to those requirements in the regulation and Official Interpretations. Further, HPC proposes that the Bureau define the QM standard for documentation and verification of income and financial resources relied upon by the creditor by retaining the existing cross-reference to the ATR regulatory provisions, as described above.

   In addition, HPC proposes that CFPB reconcile the ATR and QM underwriting requirement for adjustable-rate mortgages, to ensure that the QM standards are not less rigorous than the ATR standards. Specifically, we propose that for a QM, the creditor must underwrite the loan using the maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment will be due *or* the fully-indexed rate (as required by ATR), *whichever is higher* (modifying 12 CFR 1026.43(e)(2)(iv)(A)).

   Finally, HPC suggests that the Bureau include a provision to permit "cures" if a defect is identified in a QM loan that could render it to be out of compliance with the QM standards. For example, if, post-closing, a creditor discovers errors in meeting the income documentation requirements, a creditor would have an opportunity to cure that error and remain in compliance with the QM standards. Similar "ability to cure" provisions exist under the TRID rule[28]as well as in the QM rule related to the points and fee limit.[29] We believe the authorization to correct QM errors should align with the existing points and fees cure, permitting a creditor to make adjustments to address errors within 210 days of consummation and prior to the occurrence of certain events, including an action by the consumer in connection with the loan or consumer missed payments equivalent to 60 days past due on the loan.[30] Further, the Bureau should make the points and fees ability to cure provision permanent by removing the sunset date. This would continue to allow creditors to

transaction and on any simultaneous loans of which the creditor was aware at consummation would leave the consumer with insufficient residual income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan with which to meet living expenses, including any recurring and material non-debt obligations of which the creditor was aware at the time of consummation."

[28] 12 CFR § 1026.19(f)(2)(v).

[29] 12 CFR § 1026.43(e)(3)(iii).

[30] 12 CFR § 1026.43(e)(3)(iii).

cure inadvertent overages in points and fees by refunding such overages to consumers while maintaining the QM status of the loan.

2. ***The Bureau recognizes that industry will need time to change its practices to respond to the expiration of the Temporary GSE QM loan provision and any changes the Bureau makes to the General QM loan definition. To conduct an orderly rulemaking process and to smooth the transition to any new General QM loan definition, the Bureau requests comment, with supporting data, on how much time industry would need to change its practices following the issuance of a final rule with such a new definition. If the answer depends on how the Bureau revises the definition, the Bureau requests answers based on alternative possible definitions.***

   We appreciate the CFPB's recognition of the industry's need for time to implement changes to the ATR/QM rule. If the CFPB modifies the regulation consistent with the HPC Proposal, we request that the CFPB publish the final rule no later than 6 months prior to the GSE Patch expiration, in June 2020. If CFPB were not to adopt the HPC Proposal, depending on the substance of CFPB's rule, more time for implementation may be needed.